

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN M. GUZY,

Petitioner,

-v-

9:23-CV-339

DONITA McINTOSH,

Respondent.

APPEARANCES:

OF COUNSEL:

JOHN M. GUZY
Petitioner, Pro Se
16-B-1847
Clinton Correctional Facility
P.O. Box 2001
Dannemora, NY 12929

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New York State Attorney General
Attorneys for Respondent
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JALINA J. HUDSON, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On March 16, 2023, *pro se* petitioner John M. Guzy (“petitioner”), who is an inmate in the custody of the New York State Department of Corrections and Community Supervision (“DOCCS”) at Clinton Correctional Facility in

Dannemora, New York, filed this habeas corpus action pursuant to 28 U.S.C. § 2254. Dkt. No. 1. Briefly stated, petitioner challenges his 2016 judgment of conviction in Chenango County for, *inter alia*, second-degree murder and various state-law weapons charges. *Id.*

On March 29, 2023, Senior U.S. District Judge Thomas J. McAvoy did an initial review of the petition and ordered respondent Superintendent Donita McIntosh (“respondent”) to respond to the petition. Dkt. No. 3. Thereafter, respondent eventually sought permission to file a limited answer addressing the issue of timeliness, Dkt. No. 15, which was granted, Dkt. No. 16, and then fully briefed by the parties, Dkt. Nos. 15, 17.

On October 26, 2023, U.S. Magistrate Judge Miroslav Lovric advised by Report & Recommendation (“R&R”) that the petition be denied and dismissed as untimely. Dkt. No. 18. As Judge Lovric explained, petitioner did not file this petition until two-and-a-half-years after the New York Court of Appeals had denied his application for leave to appeal. *Id.* at 4. Although Judge Lovric also considered whether tolling principles or an equitable exception might save petitioner’s claims, he ultimately concluded that petitioner was not entitled to the benefit of any of those doctrines. *Id.* Accordingly, Judge Lovric recommended that the petition be denied and dismissed. *Id.*

Petitioner has filed objections, Dkt. No. 19, which have been briefed, Dkt. No. 20. Thereafter, the case was reassigned to this Court, Dkt. No. 21. Upon

de novo review, the R&R is accepted and will be adopted in all respects. 28
U.S.C. § 636(b)(1)(C).

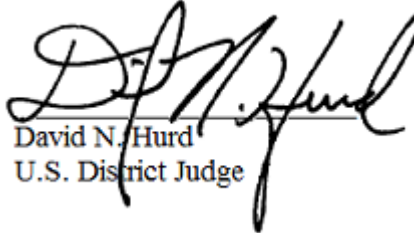
Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 18) is ACCEPTED;
2. The petition is DENIED and DISMISSED;
3. No Certificate of Appealability shall be issued; and
4. Any further request for a Certificate of Appealability must be
addressed to the U.S. Court of Appeals for the Second Circuit in accordance
with Rule 22(b) of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

Dated: May 21, 2024
Utica, New York.


David N. Hurd
U.S. District Judge